

## In the matter of St Matthew, Leyburn

### Judgment

1. By a petition dated 22 November 2016, a faculty sought in respect of the parish church of St Matthew, Leyburn. The petitioners are, respectively, the Revd Michael Hepper (vicar), the Revd Chris Lawton (assistant curate) and Mr Robert Mathews (vice-chair of the Parochial Church Council, on behalf of the churchwardens).

#### **Background**

2. The church of St Matthews is a Grade II listed building which lies within Leyburn Conservation Area. Designed by Christopher George Wray in 1868, the church is largely unremarkable in terms of its architecture. It lies to the east of the town centre and is bordered to the south by the A684.
3. The Schedule of Works comprises two main elements. First there is a relatively modest re-ordering of the north aisle and related works which (in effect) would enlarge and put on a more durable footing a temporary arrangement effected pursuant to an Archdeacon's Licence dated 23 February 2016. The second comprises external resurfacing works including the formation of a car park and various ancillary works.
4. The proposals currently before the court are the first two phases of a larger project comprising some six phases in all. Whilst it is always helpful to see a proposal within the context of more long-scale plans for a parish, the court can only determine the matters covered by the petition and nothing in this judgment should be seen as prejudging subsequent phases which, should they be pursued, will be considered on their individual merits.
5. Public Notice elicited a letter of objection from Miss Catherine Mary Setchfield who lives in property neighbouring the church. Having initially indicated she would become a party opponent, she subsequently confirmed in writing that she had changed her mind and wished, instead, for her observations to be taken into account in the determination of the petition. I have considered a raft of correspondence from Miss Setchfield, some addressed to the Local Planning Authority and some to the Bishop of Leeds (directed to a potential clergy discipline complaint which does not concern this court). To the extent that her comments are relevant and material I have given them the fullest consideration, although I might not recite each and every point of detail in this brief judgment. I have borne in mind that Miss Setchfield is elderly with a number of health issues which may have impaired her concentration and the fluency of her submissions and I have made appropriate allowance for this.

6. I have had the benefit of a detailed written response to the material placed before the court by Miss Setchfield, which has been signed by Mr Hepper on behalf of all three petitioners. It helpfully identifies where amongst Miss Setchfield's documentation her various objections are to be found. The petitioners have signified their consent in writing to the disposal of this matter on written representations.

#### **The petitioners' case**

7. The case for the petitioners is fully set out in the Statement of Significance and Statement of Needs, which have been drafted with care and sensitivity and are models of clarity. Whilst some of the content is directed to later phases of the work, the case for the minor reordering and the access/parking is fully and persuasively stated and need not be rehearsed in this judgment.
8. I should add in passing that a further aspect of the works (described as phase 2A) concerns repairs to the rainwater goods and drainage system identified in the inspecting architect's quinquennial report. Approval for these works under List B was granted by the Archdeacon of Richmond and Craven on 19 August 2016.

#### **Consultation**

9. The Diocesan Advisory Committee issued a Notification of Advice on 22 November 2016 recommending the works. The DAC certified that in its opinion the works would be likely to affect the character of the church as a building of special architectural or historic interest. My view differs from that of the DAC, as I have difficulty in identifying any special architectural or historic interest in the church or its setting which might be affected (adversely or otherwise) by what is proposed in the petition before me.
10. Be that as it may, the petitioners have consulted with the local planning authority, Historic England, the Victorian Society, and the Society for the Protection of Ancient Buildings. The SPAB deferred to the Victorian Society which indicated by email dated 5 December 2016 that it did not wish to comment on the implementation of the two phases now before the court but would like the opportunity to comment on future phases. Historic England, by letter dated 24 November 2016, also stated that it did not wish to comment on the current proposals, but reserved its right to engage with future phases of the project.

#### **Planning permission**

11. On 14 July 2016, Richmondshire District Council granted planning permission for the erection of a single storey linked annex at the church together with a lobby and associated works. This permission includes the construction of the car park.

#### **Miss Setchfield's objections**

12. Much of Miss Setchfield's correspondence is addressed to the Local Planning Authority and concerns issues which are not the subject of the current petition. Some consists of *ad hominen* criticisms of the petitioners and the inspecting architect which are not relevant matters and which the petitioners have wisely chosen not to dignify with a response.

13. To the extent that Miss Setchfield is seeking to re-open and reargue matters addressed and determined by the Local Planning Authority, I do not consider it proper for her to do so in this forum. Paragraph 7.66 of M Hill, *Ecclesiastical Law* (Third edition, 2007) includes the following:

It is considered that if issues are raised with the local planning authority by objectors, such as car parking, access, traffic flow and the effect of proposals on the views and the privacy of neighbouring landowners, and planning permission is nonetheless granted, those matters cannot be re-litigated in the consistory court in the absence of some sound and compelling reason.

14. In the absence of a good reason to look afresh at the grant of planning permission, I proceed on the basis of its regularity. I do not consider it appropriate for this court to determine *de novo* issues of noise, overnight parking, volume of traffic, visual amenity, infringement of private rights etc. I also note that a faculty was issued on 18 March 2014 out of the Consistory Court of the Diocese of Ripon and Leeds at the direction of its then Chancellor, Judge Grenfell permitting the construction of a similar car park on the same location, albeit the faculty was not implemented during its twelve month lifetime. Whilst this falls some way short of *res judicata*, I must afford considerable weight to Chancellor Grenfell's prior determination of a near-identical proposal.
15. Several of Miss Setchfield's assumptions and assertions are wrong. She suggests that there is no right of way over the proposed access to the car park, although this is expressly granted in a deed dated 31 January 2014. She asserts that a wall enclosing church property is a 'party wall' whereas in truth it lies entirely on land comprised in the incumbent's freehold.
16. With regard to the pathway to the north of the church, Miss Setchfield does not appear to have understood the limited purpose of this, namely to level the means of access to and egress from the church for the benefit of the frail, elderly or infirm. There are no plans for picnic tables, benches or play equipment as Miss Setchfield suggests.
17. With regard to the modest reordering, while a kitchen may be mooted as a possible proposal for a later phase of the works, it is not currently before the court and Miss Setchfield's comments on this are, at best, premature.
18. Miss Setchfield's alternative proposal for the routing of drainage is based upon a misapprehension as the location of the public sewer, and I do not consider it appropriate to revisit the Local Planning Authority's determination of this issue.
19. In addition, examination of the plans makes clear that Miss Setchfield's concerns that the access to the WC will be visible to the congregation is misplaced, as is her worry that space at the altar rail will be compromised.

### **Discussion determination**

20. When considering changes to a listed church, every consistory court is required to follow the framework commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158. Applying the *Duffield* questions to this case leads inevitably to the grant of this petition.
21. Neither the proposed reordering nor the construction of the car park (or any of the ancillary works comprised within the phases 1 and 2) would, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest. Whilst there remains a presumption against change, it has been (in this instance) readily displaced by the cogent and compelling matters fully argued by the petitioners in the Statement of Needs which I unhesitatingly accept.
22. I therefore order that a faculty pass the seal on condition:
  - i. that the works are completed within 12 months or such extended period as the court may subsequently order;
  - ii. that the works are undertaken under the direction of the parish's inspecting architect;
  - iii. that the works are not to commence until the petitioners have discharged in full the order for costs for which they are liable in consequence of this judgment.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Leeds

9 February 2017